

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COLLEEN M.,

Plaintiff,

Civil Case No. 21-cv-11450
Honorable Linda V. Parker

v.

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

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**OPINION AND ORDER GRANTING MOTION FOR AUTHORIZATION
OF ATTORNEY'S FEES PURSUANT TO 42 U.S.C. § 406(b)**

Plaintiff commenced this action to appeal a final administrative decision denying her claim for benefits under the Social Security Act. On February 17, 2022, the parties stipulated to an order remanding the matter to the Social Security Administration for further action pursuant to sentence four of 42 U.S.C. § 405(g). (ECF No. 19.) On remand, Plaintiff was found disabled as of June 21, 2018, and was awarded past due benefits. (ECF No. 22-2 at PageID. 775-76.) In its notice informing Plaintiff of her entitlement to benefits, the Social Security Administration notified Plaintiff that it was withholding \$19,686.00 in benefits, representing an award of attorney's fees equal to 25% of the total amount of past due benefits to which Plaintiff is entitled. (*Id.* at Pg ID 776.)

The matter is presently before the Court on a motion for authorization of attorney's fees pursuant to 42 U.S.C. § 406(b), filed by Plaintiff's counsel. (ECF No. 22.) In the motion, counsel requests fees in the amount of \$6,500.00, and provides that he also is requesting an additional fee of \$12,000.00 at the administrative level for his representation of Plaintiff on remand. Defendant takes no position with respect to the motion. (*See* ECF No. 23 at PageID. 789.)

The fees requested by counsel are consistent with the fee agreement between counsel and Plaintiff. (ECF No. 22-4 at PageID. 785.) Counsel served Plaintiff with a copy of the motion and its attachments and notified Plaintiff of her right to object to his request. (ECF No. 22 at PageId. 768, ¶ 8; ECF No. 22-5.) Counsel advised Plaintiff to inform the Court in writing if she had any objections or concerns regarding the fee request. (*Id.*) The Court has not been contacted by Plaintiff.

Section 406(b) authorizes a court to award a social security claimant the fees for his or her representative in an amount not to exceed 25 percent of the total of the past-due benefits to which the claimant is entitled. 42 U.S.C. § 406(b). While fee awards are possible under both §406(b) and the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, Congress provided that "the claimant's attorney must 'refund to the claimant the amount of the smaller fee.'" *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (quoting Pub. L. 99-80, § 3, 99 Stat. 186). The total fees

requested by counsel here and at the administrative level do not exceed 25 percent of the total past-due benefits awarded.

Accordingly,

IT IS ORDERED that Plaintiff's Motion for Authorization of Attorney Fees Pursuant to § 406(b) of the Social Security Act is **GRANTED** and Plaintiff's counsel is awarded fees in the amount of \$6,500.00. This award shall be paid out of Plaintiff's past-due benefits.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: May 3, 2024